

Claimant sought benefits in the form of a vocational rehabilitation evaluation as a result of alleged injuries from January 1, 1993 through June 30, 1993, to his bilateral shoulders and upper extremities. The injury date alleged by claimant does not appear to be based upon any specific incident other than the fact the vocational rehabilitation benefits statute changed significantly subsequent to June 30, 1993.

Claimant alleged a gradual worsening of the condition in his shoulders and upper extremities through July 26, 1993, when claimant was referred to Dr. Morris. At that time, claimant was placed on restriction, having worked his regular job through July 26, 1993. See Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220 (1994). Claimant continued working for the respondent in a modified position through December 1, 1994.

The Appeals Board finds claimant suffered accidental injury arising out of and in the course of his employment with respondent with the injury date running through July 26, 1993. This, in effect, would create an injury date subsequent to July 1, 1993, when the right to vocational rehabilitation benefits under K.S.A. 44-510g changed significantly. The Appeals Board finds it significant that claimant worked his regular job without modification and without seeking medical care until July 26, 1993. It was only at that time that claimant's medical condition necessitated treatment and that claimant was taken off his regular job and placed in an accommodated position. This would indicate the law in effect at the time of injury on July 26, 1993 would be applicable.

The Appeals Board further finds significant that claimant continued working for respondent until December 1, 1994, again making applicable the post-July 1, 1993 vocational rehabilitation law. K.S.A. 44-510g, effective July 1, 1993, restricts vocational assessments, evaluations, services and training to situations "specifically agreed upon by the employer or insurance carrier providing or making available such assessment, evaluation, services or training." K.S.A. 44-510g in effect both on the date of injury and on the date of claimant's termination of employment with respondent does not allow for vocational rehabilitation benefits absent agreement by the employer or insurance carrier. The Appeals Board finds the Order of Administrative Law Judge John D. Clark dated May 2, 1995, to be beyond his jurisdiction and is reversed and claimant's request for vocational rehabilitation benefits is denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated May 2, 1995, shall be and is hereby reversed.

IT IS SO ORDERED.

Dated this ____ day of August, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert R. Lee, Wichita, Kansas
 Frederick L. Haag, Wichita, Kansas
 James R. Roth, Wichita, Kansas
 John D. Clark, Administrative Law Judge
 David A. Shufelt, Acting Director